

1 Unless the motion and the files and records of the case conclusively show
2 that the prisoner is entitled to no relief, the court shall cause notice thereof to
3 be served upon the United States attorney, grant a prompt hearing thereon,
determine the issues and make findings of fact and conclusions of law with
respect thereto.

4 Chung asserts the following grounds for relief: (1) ineffective assistance of counsel
5 (a) for advising Chung to plead guilty to the firearm possession count and (b) for failing to
6 challenge the insufficient factual basis to establish a drug/gun nexus, resulting in entry of a
7 plea that was not voluntary and intelligent; and (2) actual innocence. See *Bousley v.*
8 *United States*, 523 U.S. 614, 623 (1998) (“To establish actual innocence, petitioner must
9 demonstrate that, in light of all the evidence, it is more likely than not that no reasonable
10 juror would have convicted him.”) (citations and internal quotation marks omitted). Liberally
11 construed, these claims appear colorable under 28 U.S.C. § 2255 and merit an answer
12 from respondent.

13 **CONCLUSION**

14 For the foregoing reasons:

15 1. Respondent shall file with the court and serve on Chung, within 30 days of the
16 date of this order, an answer conforming in all respects to Rule 5 of the Rules Governing
17 Section 2255 Proceedings, showing cause why the court should not “vacate, set aside or
18 correct the sentence” being served by Chung.

19 2. If Chung wishes to respond to the answer, he shall do so by filing a reply with
20 the court and serving it on respondent within 30 days of his receipt of the answer.

21 **IT IS SO ORDERED.**

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23 Dated: December 11, 2013


24 PHYLLIS J. HAMILTON
25 United States District Judge
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